THE HON'BLE MR JUSTICE GODA RAGHURAM

–

WRIT PETITION NO : 3461 of 2006

DATED: 23.03.2006

BETWEEN:

M/s Srinivasa Weighing Services .. Petitioner

And

The Controller of Legal Metrology and others

..Respondents

THE HON'BLE MR JUSTICE GODA RAGHURAM

–

WRIT PETITION NO : 3461 of 2006

ORDER:

Heard, Sri P.Venugopal, learned counsel for the petitioner and the learned Government Pleader for Civil Supplies appearing for respondents.

The petitioner pursues the occupation and profession of repairs of weights and measures through the aegis of a proprietary concern M/s Srinivasa Weighing Services, which was initially started by his father in the year 1968. After the demise of his father, the petitioner continued the business by procuring the requisite licence granted by the respondents from time to time. The petitioner is an existing authorized licencee for conducting repairs of both heavy and light category weighing and measuring instruments.

The petitioner claims to have the necessary skills to repair weights and measuring instruments regulated by the Department of Legal Metrology as per certificate No.146 of 1992, dated 18.03.1992, which was being renewed from time to time. The certificate was renewed up to 17.03.2002. In the year 2002, when the petitioner applied for renewal of the licence, the application not having been considered, the petitioner filed W.P.No.16409 of 2002 for a direction to the respondents 4 and 5 to verify and stamp the instruments of weights and measures repaired by the petitioner in accordance with the licence granted to him up to 2002. Some interim directions were granted in the said writ petition on the basis of which the petitioner was continuing his business.

The current grievance leading to the filing of this writ petition is due to an order of the third respondent, dated 23.01.2006, which reads as follows:

> *Sri V. Dhananjaya, M/s Srinivasa Weighing Services, Tirupati has submitted his licence application with a request to renew his licence for 2006.*
>
> *In this context, he is informed that, Regional Deputy Controller, L.M., Kurnool through his reference 2nd cited, returned his skilled workers certificate and asked licence to opt for only one category of articles and submit a fresh to the Controller, as per Rules in force at present according to the direction given by the Controller of Legal Metrology in the reference 1st cited.*
>
> *He has submitted his application for renewal without following the directions of Controller. Hence, he is once again directed to opt for only one category and submit afresh to the Controller of Legal Metrology for further action. Since then no application from his side will be considered.*

It would appear that the second respondent had asked the petitioner through a memo, dated 21.04.2005, to opt for only one category of instruments/articles for renewal of the licence for the year 2006. The first respondent by the order

impugned, dated 23.01.2006, has returned the petitioner's application for renewal of licence on the ground that he had submitted an application for renewal of licence in respect of instruments/articles, contrary to the instructions of the second respondent in the memo, dated 21.04.2005. The petitioner was again called upon by the third respondent to opt for only one category of articles and submit afresh an application to the first respondent for further action.

The petitioner asserts that the respondents have no manner of power, authority or jurisdiction to insist that the petitioner should apply for a licence only in respect of one category of weights or measures. The petitioner states that he has a fundamental right to pursue any occupation, trade or business and that the respondents have no power or authority under the provisions of the Standards of Weights and Measures Act, 1976 to impose unreasonable restrictions on such freedom of trade, profession or business.

According to the petitioner, there is nothing in the extant legal architecture; the provisions of the Act and rules or the regulations made thereunder, which authorizes or justifies the imposition of any such restrictions as insisted upon by the respondents 2 and 3. The petitioner contends that the insistence by the respondents that he should apply for licence only in respect of one category of weight or measure for the purpose of undertaking repairs of these instruments/measures is arbitrary and an unreasonable restriction of his guaranteed right to his profession, business or occupation of his choice.

The second respondent has filed a counter affidavit. The counter affidavit of the second respondent endeavors to justify the impugned action on the premise;

a. That under the provisions of the Act (Section 19) possession of a valid licence is a *sine quo non* for pursuing the occupation or business of repair of weights and measures that could be regulated by the Act;

b. That a licence is to be issued in such form as may be prescribed;

c. That the State is authorized to appoint a Controller of Legal Metrology and other staff as necessary for exercising the powers and efficiently discharging the duties conferred or imposed on them under the Act;

d. That the power inhering on the Controller to enforce the provisions

of the Act and the rules made there under includes substantive exercise by the Controller of a power to impose such restrictions as appear necessary for the regulation of the licencees; and

e. That under the general and special conditions spelt out in sub-rule 7 of Rule 12 and condition No.1(d) of the Standard of Weights and Measures Rules 1986 the Controller is empowered to impose any condition while granting a licence.

Article 19(1)(g) of the Constitution guarantees to all citizens right to protect any profession or to carry on any occupation, trade or business Article 19(6) saves the operation of any existing law insofar as it is imposes and enables State to making any law imposing, in the interest of the general public reasonable restrictions on the exercise of the right conferred by Article 19(1)(g) of the Constitution.

The prescription of professional or academic qualifications necessary for practicing any profession or carrying on any business, trade or business must reasonable restrictions on the guaranteed fundamental right under the Article 19(1)(g). Qua, Article 19(6) of the Constitution there should be something in the Act or in any statutory rule or a legitimate instrument under the provisions of the Act issued by any regulating authority under the Act in exercise of a power traceable to the provisions of the Act or the rules made, there under which clearly restrict the plenitude of a citizens' right to pursue any occupation, trade or business guaranteed under Article 19(1)(g) of the Constitution. The respondents are required to establish that granting a licence for only one category of article is in public interest or must alternatively establish that the granting of a licence for more than one article, is subversive of public interest.

The third respondent's order dated 23.01.2006 does not either expressly or by any compelling implication state or show that the petitioner is disqualified either in terms of the technical expertise required; the manpower requirement or any other infrastructure requirement, to undertake repairs of more than one article. The very fact that the third respondent does not even specify that the category of articles, which alone the petitioner is competent to repair, is indicative of the

unreasonableness of the decision making process of the respondents.

The condition imposed by the respondents that the petitioner should apply for a licence in respect of only one category of articles, prima facie, subserves no public interest requirement. The insistence on this condition is not on the basis of any expressed inadequacy of the petitioner's qualifications, experience or infrastructure.

On the aforesaid view of the matter and in the context of the fact that the petitioner is claiming exercise of a guaranteed fundamental right, the respondents are required to specify the reasons which are subject to strict judicial scrutiny, why the petitioner is disentitled to renewal of licence except in respect of one category of articles. The vague and breezy insistence in the order dated 23.01.2006 that the petitioner should opt for only one category of articles does not satisfy the requirements of the strict scrutiny standards of the respondents conduct, in the area of regulation of a fundamental right which enures to the benefit of the petitioner as a citizen of this Republic.

On the aforesaid view of the matter, the third respondent's memo dated 23.01.2006 is quashed. Accordingly the respondents shall and forthwith, reconsider the petitioner's application dated 29.12.2005, for renewal of his licence for the year 2006, and pass appropriate orders thereon either granting the licence or otherwise. The respondents shall not reject the petitioner's application for renewal of licence even if it is made for more than one category of articles solely on the ground that no application can be made for more than one category of articles. The petitioner's application for renewal of licence, if in respect of more than one category of articles shall be considered and processed on the basis of whether the petitioner has the requisite expertise, skills, qualifications or infrastructure to repair the several categories of articles for which the petitioner has applied for renewal of licence. In any event, the first respondent shall pass a reasoned order dealing with the petitioner's application for renewal of the licence, setting out reasons why the first respondent declines the application of the petitioner for renewal of licence in respect of more than one category of articles, should the first respondent be rationally satisfied that a licence can be granted for only a specified category of articles. A detailed and reasoned order of the first respondent shall be furnished to the petitioner within two weeks from the date of receipt of a copy of this order.

The writ petition is disposed of accordingly. No costs.

_____

Justice Goda Raghuram

Dated: 23-03-2006

kvrm